

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35782

STATE OF IDAHO,)	2009 Unpublished Opinion No. 582
)	
Plaintiff-Respondent,)	Filed: August 25, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
NEAL WAYNE CAPLINGER,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge.

Order for no contact, affirmed.

Greg S. Silvey, Kuna, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

PERRY, Judge

Neal Wayne Caplinger appeals from the district court's order for no contact. For the reasons set forth below, we affirm.

Caplinger kidnapped J.C. and sexually assaulted her at his apartment before she was able to escape and notify police. Caplinger was charged with first degree kidnapping, I.C. §§ 18-4501, -02; rape, I.C. § 18-6101; penetration by foreign object, I.C. § 18-6608; and being a persistent violator, I.C. § 19-2514. Caplinger entered a binding guilty plea pursuant to I.C.R. 11 to an amended charge of second degree kidnapping, I.C. §§ 18-4501, -03, and the state dismissed the remaining charges. The district court sentenced Caplinger to a unified term of fifteen years, with a minimum period of confinement of five years. The district court also entered a separate order requiring Caplinger to have no contact with his victim for fifteen years. Caplinger appeals.

Caplinger argues that the district court's no-contact order is invalid because it was not part of the oral pronouncement of his sentence. The state responds that the no-contact order was

not a term of the sentence and need not have been orally pronounced. Idaho Code Section 18-920(1) provides:

When a person is charged with or convicted of an offense . . . for which a court finds that a no contact order is appropriate, an order forbidding contact with another person may be issued. A no contact order may be imposed by the court or by Idaho criminal rule.

Idaho Criminal Rule 46.2 provides certain technical requirements for no-contact orders issued pursuant to I.C. § 18-920.¹ However, neither I.C. § 18-920 nor I.C.R. 46.2 require a district court to include the no-contact order in its oral pronouncement of sentence. Therefore, the district court did not err by not including the no-contact order in its oral pronouncement of Caplinger's sentence.

Caplinger argues that, in *State v. Jeppesen*, 138 Idaho 71, 57 P.3d 782 (2002), the Idaho Supreme Court indirectly held that no-contact orders entered upon conviction were part of the sentence. However, Caplinger misconstrues the holding of *Jeppesen*. In that case, the Supreme Court held that a prior version of I.C. § 18-920(1), which did not contain the language authorizing a no-contact order upon conviction, only allowed for the issuance of a no-contact order as a condition of pre-trial release. *Id.* at 75, 57 P.3d at 786. In response to the state's argument that a no-contact order could be imposed as part of Jeppesen's sentence, the Court reasoned: "If the prior statute was intended to apply to both pre-trial release and sentencing, there would have been no need to amend the statute to add the words 'or convicted of.'" *Id.* Caplinger argues that *Jeppesen* stands for the proposition that a no-contact order must be part of a defendant's sentence if not issued as a condition of pre-trial release. This is not the holding of *Jeppesen*. The no-contact order in this case, although discussed at the sentencing hearing, is not part of Caplinger's sentence. It is not included in the judgment of conviction or as any condition of probation. It is a separate order which the district court found to be appropriate based on Caplinger's conviction for second degree kidnapping. It is not a punishment for his offenses, but a prophylactic measure to protect the victims. Therefore, the district court was not required to

¹ The no-contact order in this case met all the technical requirements of I.C.R. 46.2. It contained all the necessary information and advisories and was properly served on Caplinger while in custody.

include it in the oral pronouncement of sentence. Accordingly, the district court's no-contact order is affirmed.

Chief Judge LANSING and Judge GUTIERREZ, **CONCUR.**